

1 (Court reconvened at 1:30 p.m.)

2 THE COURT: Okay, Mr. Gordon, you may continue you.

3 CROSS-EXAMINATION

4 BY MR. GORDON:

5 Q Mr. Chimenti, did you review any of the actual claims in
6 the twenty one year program?

7 A No.

8 Q And I think in one of your reports, do I recall
9 correctly that you thought there were about eight hundred
10 claims?

11 A I am not sure if that was in my report. I don't believe
12 so.

13 Q When Your Honor retained on behalf of Royal you assumed
14 that the only program here that was at issue based on the
15 complaint were the 1980, '95 program years?

16 A That's correct.

17 Q And Your Honor not asked to advise payment issues and
18 receipt issues prior to 1980?

19 A No.

20 THE COURT: Prior to what year, Mr. Gordon?

21 MR. GORDON: Prior to 1980.

22 THE COURT: Prior to '80?

23 Q Was the information that you had received prior to July
24 10, 2003 such for you to render an opinion as to what
25 additional premiums were payable or returnable?

2

1 A I reviewed probably a dozen boxes of documents, business
2 records from Royal Insurance and it probably took me a week
3 to go through.

4 Those included the underwriting records, loss
5 control reports, retrospective reading (adjustments) there
6 were claim files although I didn't reviewed claim files per
7 se but I did go through all those boxes to identify the
8 materials that were in those. And the information that I
9 received was sufficient for me to calculate the retrospective
10 premiums.

11 Q But, in your report you indicate that you, the amounts
12 indicated as premium owed are based on the assumption that
13 all prior retrospective premiums were paid in full. Isn't
14 that true?

15 A That's correct.

16 Q And at the time you issued your report, I think in your
17 deposition you indicated that absent that information you
18 were not able to render an opinion as to what was owed and/or
19 what was returnable until you could determine what in prior
20 years was earned and paid, isn't that true?

21 MR. FOX: I am going to object. It's a
22 mischaracterization of the report.

23 THE COURT: Overruled.

24 You can answer the question.

25 Q Isn't that true? What I are?

3

1 A When I first wrote my record calculated the then current
2 retrospective premiums.

3 Q And you indicated --

4 MR. FOX: The witness, I believe, was continuing
5 his answer.

6 MR. GORDON: Oh, I'm sorry.

7 THE WITNESS: Yes. Then I was advised that there
8 were prior years premiums that had not been paid. That's
9 when I authored my supplemental report to bring it up to

10 date.

11 Q Who told you that who told you that the premiums had not
12 been paid?

13 A I don't know -- probably Mr. Fox.

14 Q So Mr. Fox told you that prior premiums had not been
15 paid and that allowed you then to conclude how much premium
16 was owed?

17 A What I did is I went back and calculated the premiums
18 for all of the years where the premiums had not been paid to
19 see whether there was money owed or whether there was return
20 premium to the policyholder.

21 Q Right but you need some additional flower are
22 information you are needed to know what had previously be
23 paid and Mr. Fox was the source of that information that
24 allowed to you enter into the supplemental report?

25 A What he gave me was the statement of account from Royal

1 Insurance.

2 Q Well, the statement of account was attached to the
3 complaint. You already had that?

4 A Yeah but it wasn't explained to me from the statement of
5 account that was attached to the complaint that what I was
6 asked to do originally was to go back all wait to '94. What
7 I was asked to do originally and it wasn't from Attorney Fox,
8 it was from another attorney in the firm, was similar simply
9 to calculate the current retrospective premiums, which for me
10 to do that, would simply be, which I did calculate the
11 retrospective premium as of that date and compare them to the
12 premiums from the prior retrospective adjustment. Which
13 would then bring the premium current for that program.

14 A Subsequent to that, I was asked to go back and calculate
15 and and verify all the amounts on the statement of account
16 which is what I did.

17 Q And who asked you to do that?

18 A That would have been Attorney Fox.

19 Q And you said that someone had to explain to you what the
20 statement of account was. Who did that, Mr. Fox?

21 A No. They didn't explain to me what what it was. Just
22 that the retrospective premiums would have to be calculated
23 from a different start point than where I had started from.

24 Q And who told you that?

25 A Mr. Fox asked me to go through the statement of account

1 to verify all those amounts that were being claimed by Royal
2 insurance.

3 Q But the statement of account doesn't reflect what's been
4 paid and when it's been paid, does it?

5 A It reflects all of the charges and all of the credits on
6 Latrobe's account.

7 Q It reflects what credit some -- by the way what is the
8 statement of account, do you know what that is?

9 A That would be Royal's record of the premiums that were
10 charged and the credits for the various policies in that
11 program. So, it's their record of the amounts that are due
12 under that program from 1980 to '95.

13 Q Who told you that, who told you the statement of account
14 is roles eye records that reflect what has been paid and what
15 it paid who told you that?

16 A Well, I had conversations with a few different people at
17 Royal?

18 Q And who told you that?

19 A Um, the lady's name was Dianne, who is not Dianne Leger.

20 It was another Diane, who I do not recall her last name, that

21 I spent a better part of the day going through all those

22 numbers, numbers where even I had questions about that we

23 needed to verify so that my calculations, if there is a

24 number on that statement of account that did not match any of

25 my calculations, then my point was, I would have to

6

1 disqualify that number if it was a charge to be fair to all

2 concerned.

3 Q The statement of account that you reviewed was a summary

4 that was prepared on what date?

5 A I don't have that statement of account with me. So, I

6 can't tell you the date it was prepared.

7 Q It's a summary of all the prior years, 1980 through 1995

8 as to what was charged and allegedly what was received, is

9 that what it is a summary?

10 A I think it probably more than a summary. It's their

11 record of the charges for the premiums for the various policy

12 periods and also the credits that would apply to throws

13 policy periods.

14 Q But, you didn't review Diane ledgers testimony that

15 indicates that you can't determine what was paid or received
16 from the --

17 MR. FOX: That's a complete misrepresentation of
18 her testimony, Your Honor.

19 MR. GORDON: Well, she is here and she is going to
20 testify.

21 Q So, you are assuming that the statement of account gives
22 gives you all the information that you would have record to
23 determine what was earned, what was paid and properly
24 credited from 1980 to 1995? Is that your assumption today?

25 A It's not my assumption. My answer is, the statement of

7

1 account is all of the charges and credits as of the date of
2 the statement was prepared according to Royal's eye business
3 records.

4 Q Well, how do you know it was according to roles business
5 record thes?

6 A Because they prepared it they had to prepare it from
7 something.

8 Q From what?

9 A From their records.

10 Q What is the records they prepared it from?

11 A That you would have to ask Royal but it would be from

12 their accounting department, the billings that they would

13 bill and the payments that were received, whatever is

14 outstanding, would be outstanding would be on Latrobe's

15 account.

16 Q So, somebody looked at Royal's business records and

17 prepared a summary which you call the account?

18 A The statement of account.

19 Q Right. And you don't know who prepared that summary?

20 A The individual, no.

21 Q And you don't know what documents they looked at to

22 prepare that?

23 MR. FOX: Objection asked and answered. He

24 identified the documents.

25 THE COURT: Overruled.

1 Q You don't know who prepared it?

2 A No. The individual that I know that was, I don't want

3 to say.

4 Q Do you know who prepared it, Jerry?

5 A No, I don't know who prepared it.

6 Q That's all.

7 MR. GORDON: Judge, could you please ask him to
8 answer the questions?

9 THE COURT: I think he is doing the best he can.

10 Q You don't know who prepared it?

11 A No. But, I mean, the source of the record that we
12 received it from would have been Mr. Hooper.

13 Q Did you complete where Mr. Hooper?

14 A No.

15 Q You tried to meet with Mr. Hooper?

16 A I didn't try to meet with him. We attempted to speak on
17 several occasions.

18 Q You never could?

19 A Then I spoke to someone else in his area. (Yes is I
20 didn't?)

21 Q And in addition to not knowing who prepared the document
22 you don't know what actual business records were reviewed and
23 to calculate what was actually received?

24 A I didn't prepare the account. That was prepared by

25 Royal.

9

1 Q Now, at no time in your report in either report, do you
2 address earned premium, payments and credits for 1974 to
3 1980, have you?

4 A No.

5 Q That's still part of the retro program that's at issue
6 in this case, is it not?

7 A Not to my knowledge. The only years at issue are 1980
8 through '95.

9 Q So, your assumption as to what premium is due is
10 presented indicated on the assumptions that as of 1995 all
11 prepare that was earned was paid and that the program lasted
12 from 1980 to 1995?

13 Q That is how you calculated premiums, correct?

14 A I calculated the premiums based on the fact that
15 according to roles' records and admission that all of the
16 premiums were paid up through 1994. So, it wasn't necessary
17 for me to go back prior to 1994 to calculate the
18 retrospective premium from 1995 to the current date.

19 Q Okay. That was the letter basically tells you that all

20 the premiums that were billed were paid, it doesn't indicate,
21 however, how much premium or credit over and above what was
22 billed was retained by Royal, does it?
23 A That would have come {UTD} on the statement of account.
24 If there was a payment over and above what they would have
25 billed (all one stings.

10

1 A And that just simply didn't exist.
2 Q Well, when you say it didn't exist, you don't even know
3 the records that were reviewed to compile the statement of
4 account, do you.
5 A What I am telling you is that there is no payment over
6 and above what was billed to Latrobe on Royal's statement of
7 account.
8 And that the statement of account would have
9 included all of the credits for payments made and all the
10 charges for the the premium so if there was something of and
11 above what was bill had paid by Latrobe, then it would appear
12 on that statement of account.
13 Q Are you telling me that the statement of account is a

14 business record that's kept in the ordinary course of

15 business of Royal for its insureds?

16 Q Are you telling me that's the case?

17 A It's my understanding that that was prepared from their

18 business records that are kept for their policyholders.

19 Q And who told you that, Mr. Fox?

20 A No. In my discussions with the Diane, not Dianne Leger,

21 at Royal.

22 Q So, just so that I am clear on that there and we will

23 move on, you received a summary from swung named Diane whose

24 last name you do not know who basically purported to

25 represent to you that the statement of account is a summary

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1 overall prior billingses between 1980 and 1995 and

2 establishing also a credit for what has been paid?

3 A I didn't say that.

4 Q Well, can you say that?

5 A No, I wouldn't say that, no, because that is not way

6 I've testified.

7 THE COURT: As I recall, what I said was the

8 statement of account shows what was earned, paid and credited

9 during that particular period, is that what you said?

10 THE WITNESS: Your Honor.

11 THE COURT: Is that how you have defined the

12 statement of account?

13 THE WITNESS: No. The statement of account is a

14 record overall of the credits and payments that are still

15 outstanding on the account.

16 THE COURT: All right.

17 BY MR. GORDON:

18 Q You leave no firsthand knowledge as to how accurate that

19 is, though?

20 A I would say it's accurate if it was prepared from

21 Royal's business records. I leave no information that would

22 lead me to believe that it not accurate.

23 Q But you have no information that would establish that it

24 is accurate, you're not had custodian of that record are you?

25 A I am not the crud I can't think of that record.

1 Q And you know {SPWHRAEUD} {PHRA*EURD} no Royal in the

2 preparation of that document?

3 A No, sir.

4 Q Your opinions as to what premiums are owed as of today
5 are related in substance part to the 2002 loss run?

6 A What I did to prepare per the.

7 MR. GORDON: Judge, could I have an answer to that
8 question?

9 THE WITNESS: I am answering your question. And
10 the way you phrased your question I am going to reply.

11 THE COURT: Time out. This isn't the barroom.
12 This is a courtroom. Ask your question again.

13 MR. GORDON: Yes.

14 Q The calculation of retrospective premiums are tied into
15 the 2002 -- owe {OEUFRPBLGTS}?

16 A That's not even a fair question. (Loss {HRUPB} {WAPSZ}
17 the last two word)? Because they are sensitive as to time so
18 they are not tied into exclusively the 2002 loss run.

19 {STPHFRPBLT} {THAFPGS} the last two word in the question.

20 A Loss run.

21 These programs as you had indicated before the
22 break are dynamic that they change from year to year. So, in
23 order -- to answer your question and in order to prepare for
24 my testimony today, per the order issued by the Court asking

25 for expert testimony on the retrospective premiums due, what

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1 I did is, I obtained the current loss runs valued in on six.

2 Q But, you haven't testified to that?

3 A Can I answer the question? You asked me the question

4 and I am just us goods just going to give (blue) my answer.

5 What I did is, I calculated those premiums, (the
6 retrospective premiums) since they are dynamic in nature and
7 brought them to date and --

8 MR. GORDON: Judge --

9 THE WITNESS: And based on my --

10 THE COURT: Just a second. Please continue.

11 MR. GORDON: He is trying to get in current loss
12 run data. He has already given an opinion as to \$851,000.
13 That's what I am asking him about.

14 THE COURT: Well, let him finish. Go ahead, you
15 can continue.

16 THE WITNESS: Thank you, Your Honor. Since these
17 programs shall dynamic and think change with time, based on
18 the current loss runs valued as of February, 2006, the

19 retrospective premium for the program would be \$903,670.

20 MR. GORDON: Your Honor, I would ask, for the same
21 reason as before, we have never been provided this
22 information we have never seen any of the claim
23 documentations we can't comment on whether or not that's
24 fair, reasonable, okay.

25 The question that I had is what he concluded how

14

1 much premium was due did he rely on the 2002 loss run. His
2 response was not responsive at all.

3 THE COURT: Answer that question.

4 THE WITNESS: I understood your original question
5 to be for my preparation to testify today did I rely on the
6 2002 loss runs, which is not true.

7 When I authored my report back in 2000 three I
8 relied on the 2002 loss runs which would bring the
9 retrospective premium as current as possible. To prepare for
10 today that would not be fair to Royal nor to Latrobe if
11 Latrobe was owed money. (Period before to prepare for today.

12 THE COURT: Don't forget to put the loss run at the
13 end of that question, the last two words.

14 BY MR. GORDON:

15 Q As I understand it, your, the information that you had
16 requested that allowed to you calculate in 2003 what premiums
17 were payable was the, or owed or returnable was the statement
18 of the account and the 1999 letter that was issued by a
19 gentleman by the name of Hooper to attorney Gianotti?

20 A Those weren't the only thing that I relied upon. As I
21 stated, there were boxes stacked on end would be twenty feet
22 long, that I relied on, that I reviewed to come to my final
23 analysis of the premiums.

24 Q But, you had had those boxes previously and that was not
25 sufficient for you to issue a decision on what was owed as of

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1 July ten 2003, you said that you needed more information and
2 the information that you received that allowed to you reach
3 your opinion that \$851,000 was owed was the statement of
4 account which had she previously proceeded to you but you
5 weren't sure that you could understand it and a letter in
6 1999?

7 MR. FOX: Your Honor, I am going to object at this

8 attempt to summarize all this testimony.

9 MR. GORDON: It is important, Your Honor.

10 THE COURT: The objection is overruled. Go ahead,

11 Mr. Gordon.

12 BY MR. GORDON:

13 Q That's correct, that was, the new evidence that you got?

14 A No. It's just a matter of the difference between what I
15 was originally asked to do and what I was subsequently asked
16 to do.

17 MR. GORDON: Do you have -- I would like to make a
18 copy of the 1999 letter that you have relied upon to
19 establish that they were, the parties were paid I guess up to
20 date through 1995 I would like to make that a exhibit in this
21 case. Your Honor, I don't have that?

22 MR. FOX: Your Honor, I am going to object to the
23 use of that letter since it does involve attorney-client
24 privilege and it's a letter between counsel and the client.

25 MR. GORDON: Well, then I don't believe he can rely

1 on that communication, Your Honor and I would ask that the
2 testimony then be stricken.

3 THE COURT: What does the -- thinks part of your
4 report?

5 MR. GORDON: It's not, Your Honor.

6 THE WITNESS: No, Your Honor, it is not part of my
7 report. It was part of the premise of my report, though to
8 establish the baseline as to when the retrospective premiums
9 were paid in full with no premium due nor returned premium
10 owed to the policyholder. So, to establish that baseline for
11 me then to do the subsequent retrospective adjustments for
12 '95, six, seven to current.

13 THE COURT: All right. How does the letter factor
14 into this opinion?

15 THE WITNESS: All it does, Your Honor, it
16 establishes when Latrobe's account was at zero. Then all --
17 it's.

18 THE COURT: Can we read parts of that record, that
19 letter into the record if there was some communications
20 between counsel that you would consider to be confidential,
21 perhaps we can keep them out of the record.

22 MR. GORDON: Well, Your Honor --

23 MR. FOX: I would be happy to do that, Your Honor.

24 MR. GORDON: Your Honor, in light of the fact that

25 he's relying on the letter that, that he has testified from

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1 the letter, I hardly think that there is an

2 attorney-client, -- besides it's been disclosed to the

3 expert.

4 THE COURT: I haven't read the letter. I have no

5 idea what it says.

6 MR. FOX: Your Honor, to cut through this, I am

7 happy to degree to the admission of the letter so long as

8 counsel will stipulate that we are not waiving

9 attorney-client privilege arrests to anything extending

10 beyond the letter.

11 THE COURT: That solves our problem.

12 MR. GORDON: I would like to offer it, Your Honor.

13 THE COURT: We'll have it marked, please.

14 MR. GORDON: In was the an as in {AL} better {S},

15 Your Honor (letters. Letter.

16 MR. GORDON: And I don't have a copy of it and I

17 would ask that David, later on perhaps we could --

18 MR. FOX: We have a copy marked. Give us a second.

19 (he said letter an and then letter {S}: (as {STPH*FPLT}).

20 MR. GORDON: Why don't I leave the witness with a
21 copy.

22 BY MR. GORDON:

23 Q To the best of your knowledge, when this letter was
24 issued, the '74, '80 programs were not at issue,, is that
25 correct?

18

1 Q There was a lawsuit involving '80 to 1995?

2 A That would be correct.

3 Q Mr. Chimenti, insureds move premiums through insurance
4 companies in a variety of ways, do they not?

5 A Could you repeat the question?

6 Q Sure. Let me give you some examples.

7 An insured can make a direct payment to an insurer
8 correct?

9 A That's correct.

10 Q The broker can establish an account with a carrier and
11 make the payment on behalf of the client, correct?

12 A That's true.

13 Q Do you know what a factoring arrangement is?

14 A It would be probably a financing arrangement.

15 Q And you are familiar with those as will?

16 A Somewhat. I have not been directly involved in those,

17 though.

18 Q That's a way that premiums are oftentimes moved to

19 insurers, correct?

20 A Like I say, I don't have firsthand experience {STHO}

21 those thing.

22 Q But, you understood what a (factoring) arrangement was?

23 A Yes. But, again, I am not here to testify regarding

24 that.

25 Q Loss sensitive programs, {*FRPL} programs such as retro

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1 programs, the insurance company in those types of programs is

2 effectively front go monies that ultimately the insured may

3 have to reimburse in while or in part, correct?

4 A There are lot loss sensitive programs where, yeah, the

5 insurance carrier is going to charge a basic premium plus the

6 claim payments for the indemnity answer medical and a factor

7 for their expenses on the claims {STKPWHRO}.

8 Q Well, but I think my question is, the insurance
9 companies is essentially going to start front go the loss
10 thanks ultimately are going to be reimburse I believe by the
11 insured in whole or in part.

12 A To a certain extent, that would be true.

13 Q The insurance company can protect itself by securing
14 collateral?

15 A With a retrospective program?

16 Q Yeah.

17 A I am not familiar with retrospective programs myself
18 where the, well I suppose I have had maybe one or two where
19 the carrier requested some collateral, but --

20 Q As in the form of?

21 A It could be a letter of credit. Some type of
22 arrangement.

23 Q {STPHRFPLTD} practice program?

24 Q What are the documents, the business document thanks

25 Royal retains what are the names of those documents that

1 thanks address monies which are paid directly by the insured,

2 monies that come to an insured on behalf of the broker,

3 monies that are paid under a factoring arrangement or

4 collateral accounts, do you know?

5 A I'm not sure I understand your question.

6 Q Well, does Royal have a business record or business

7 records that establish had those types of payment

8 relationships?

9 A I think I am probably the wrong person for you to ask

10 those questions. I don't know what Royal has.

11 Q And so the business records that confirm payments by or

12 on behalf of an insured or whether there is collateral or

13 draw down, you are not the proper person to address that

14 issue?

15 A No.

16 Q Do you know whether premium paid by Latrobe between

17 1974, 1995 and/or thereafter, was ever paid on Latrobe's

18 behalf by a broker?

19 A That I don't know.

20 Q Do you know if it was ever paid by a factor?

21 A No.

22 Q Do you know whether or not there was collateral that

23 would support the premiums in the (event) that the premiums

24 were not paid?

25 A No.

21

1 Q When we began this case in February of '05, we had a
2 seminar, if you will, from both you and Mr. Raabe on the
3 mechanics of the incurred loss retrospectively rated program,
4 and there was some discussion as to the importance of the
5 total incurred value in the formulation of the retrospective
6 premium. Do you recall that?

7 A I -- I don't recall the seminar, to tell you the truth,
8 no, so --

9 Q You don't recall testifying in Court the importance of a
10 total incurred value and plugging it into the --

11 A I thought you meant a seminar --

12 Q I meant a seminar for the benefit of the Court.

13 A No. No. I thought you meant a seminar that me and
14 Mr. Raabe attended somewhere.

15 Q Remember we had a lesson from you and Mr. Raabe talking
16 about the mechanics and the incurred loss retro program?

17 A Yes.

18 Q And I think you indicated that total incurred values are
19 the values that would have the greatest significant impact on
20 what premium is earned because that is the value that's going
21 to fluctuate. (MAYBE THIS IS THE ANSWER) It is going to be
22 the variable part of the equation.

23 A It would be the variable part of the equation.

24 Q Now, in light of the fact that you have not reviewed the
25 actual claims, would it be fair to state that you are relying

22

1 on the fact that the total incurred values contained in the
2 loss running accurately reflect that which has been paid,
3 medical, that which has been paid out in indemnity, and that
4 which has been paid out in litigation expenses?

5 A Yes and I think that that was all resolved through phase
6 one of the trial.

7 Q Well, no that's a damage issue. That is not phase one
8 of the trial.

9 A I guess to clarify my answer, that Royal's records as
10 far as their total incurreds are accepted.

11 Q No, they have not. We haven't even talked about the
12 total incurred values.

13 All that we have talked about is whether the claim
14 was handled correctly. We never talked about how much was
15 actually paid out and whether that is accurately reflected in
16 the loss run. That's a damage issue here.

17 MR. FOX: I am going to object. Is that a question
18 or a statement?

19 MR. GORDON: I was just identifying that for the
20 witness since he seemed to be confused on the issue.

21 THE WITNESS: My function here today, in response
22 to the order from phase one, was to offer my calculations for
23 the retrospective premiums.

24 Q Right. The calculations though are now predicate at
25 this time on the loss run of 2002 because you did not go into

23

1 the file to determine what was paid with in the file, you
2 accept that the information contained in the loss run is
3 accurate?

4 A Well, I think loss runs would be accurate. What else
5 would we go by? If there were issues regarding the total
6 incurreds and what was paid, it's my understanding that those

7 would have been claim handling issues if claims were overpaid

8 that they would not be part of today's proceedings.

9 Q Mr. Chimenti, I am not contending on the claims that

10 we've already discussed that there has been any over or

11 underpayment, what I am asking you is whether or not you have

12 reconciled the information on the loss run, we haven't

13 discussed with the Court the loss run.

14 Does the loss run fairly reflect that which was

15 actually paid in the case? Do you know?

16 A I would have to say yes.

17 Q How do you draw that conclusion?

18 A Because the loss runs are produced from the payments

19 that were made on the claim files.

20 Q Somebody then takes the claims information inputs that

21 into data that becomes the loss run?

22 A It's all done through computerization.

23 Q Right?

24 A Yes.

25 Q Was it all done by computerization in 1974 and 1990 and

2 A I would have to say yes. I'm just going back through my
3 own personal experience.

4 Q With Royal?

5 A Not with Royal. My own personal experience that the
6 companies that I worked for had a computer sustem that
7 recorded claim payments that. That information was then used
8 to produce loss runs.

9 Q You don't know in the instant case whether Royal had
10 such a computer or who inputted the information to devise the
11 loss run, do you? Do you know?

12 A Mr. Gordon, if you are trying to say that Royal didn't
13 have a computer back in 1980 --

14 Q No. I am just asking you.

15 A I think we are way past reality here.

16 Q I am asking you, do you know whether or not there was a
17 computer system that transferred paid on a particular file
18 into the loss runs that were used for you?

19 A That would be the whole design of the computer system
20 stood that.

21 Q Do you know whether Royal had that in place?

22 A I would have to say yes from the records that I

23 reviewed, I would have to conclude that yes that they did.

24 Q And so your assumption is that the information in the

25 2002 loss runs accurately depict that which was actually

25

1 petition out in these claims?

2 A Yes.

3 Q And the assumption is made because you think they would

4 have a computer and that the computer would accurately take

5 on that task, that's your assumption?

6 A That is the way that insurance systems operate.

7 Q Yes. Mr. Chimenti, as part of -- you are the principal

8 of American Adjustments Services or Management Services?

9 A American Risk Management Services, Incorporated.

10 Q And part of your role, is it not, is to make sure that

11 insureds who have statistical information filed with the

12 bureau have their statistical information filed accurately?

13 A That's correct.

14 Q And you make substantial dollars in fees by identifying

15 mistakes reporting mistakes where insurance companies have

16 proceeded data to the rating bureau and the rating bureau

17 miscalculateds or misinterprets or is misinformed about the

18 value the total incurred value on a claim?

19 A I would say that what I find is either error is played
20 in the calculations of the experienced modification factors
21 by the Bureau or that there may be more than one way of
22 reporting data or that the data reported was not accurate.

23 Q So, there is, in your world, unreliability of the data
24 at times as being reported to the Bureau you identify those
25 errors that compels the Bureau to recalculate experienced

26

1 modification factors and then when that is done, there is a
2 return of premium which you share with the client?

3 A True.

4 Q And the data that you review typically comes from the
5 loss runs that are being provided by the insurer to the
6 Bureau?

7 A Don't really come from the loss runs. Those are, it's
8 data that's proceeded on than unit statistical reports to the
9 go data Bureau.

10 Q So, what does the insurer do? The insurer doesn't go
11 through every single file and review all the data to file out

12 the statistical reports they go to the loss runs, don't they?

13 A Well it's information that would be captured from their
14 computer system. It may be slightly different from the same
15 system that would produce loss runs for an insured.

16 A But there are other areas that I find in my practice
17 where although the data may have been reported correct him at
18 one level to the rating bureau, in prior levels it play not
19 have been reported and she rarely, which would then pose a
20 situation where I would then go to the insurer and the rating
21 Bureau and ask that those values be revised.

22 Q But, the total incurred values that have been reported
23 to you one way or another may not accurately reflect what the
24 losses were and we need to modify those correctly?

25 A Well, let me just give you a example this way I think

27

1 everyone would understand.

2 For instance, let's say that there was a claim that
3 was reported to the insurer that was denied but they
4 establish a \$50,000 reserve for their exposure on that claim.
5 That \$50,000.00 would be used in the calculation of the
6 experienced modification factor. If this claim claim is

7 litigate did I do for two or three years, that \$50,000 value
8 would be report had to the Bureau and used in the calculation
9 of the policyholders' experience rating. {SPEPB} {RAEULGT}.

10 If that claim -- I wasn't done.

11 Q Sorry?

12 A {TPREUFRPBLGTSD} that claim is then found to be
13 non-compensable, what the carrier is to do is to file a
14 correction report where the rating Bureau.

15 Now, the value when it was originally report
16 testimony at \$50,000 was correct and accurate. The value
17 subsequently the following year at level two when it was
18 reported to the Rating Bureau at \$50,000 was correct and
19 accurate.

20 Then the claim is found to be non-compensable at
21 level three the carrier reports zero. But, they are also
22 record to go back and correct level one and two. Not because
23 of the information was incorrect when it was report had, it's
24 just in, after the fact a claim was declared non-compensable
25 which according to the rating Bureau rules they now need to

1 go and correct that value to zero?

2 Q But that's only a limited, that is only a limited basis

3 for remember filing statistical cards that is not what,

4 that's not all you do at the rating Bureau there are traps

5 metal errors all the time that you are looking for are there

6 not?

7 A Let put it this way: There are claim values that are

8 report had to the rating Bureau.

9 Q Right.

10 A That simply can't be challenged.

11 Q But, there are so that are reported that you will

12 challenge?

13 A Very few. There has to be a reason within the reading

14 Bureau rules to remember voice those values otherwise

15 although I may not agree with the values personally, it

16 really doesn't matter because there is no rating Bureau rule

17 that would allow the Bureau to revise those values.

18 Q Oh, yeah. Typographical errors are, in fact, a basis --

19 in other words, when the Bureau is confronted with a

20 statistical card where there has been a typhographical error

21 where the carrier has misreported the value of the client,

22 the rating Bureau has a --

23 A That's one of the three reasons, yes. What I am saying
24 is, if you simply don't agree with the value that the carrier
25 reports there is no {RAOULGT}.

29

1 Q I am not talking about agreeing with the value I am
2 talking about the miss reporting of values. In fact that
3 occurs with frequency where there is a specific regulation
4 that allows the Bureau to accept a refiling of the
5 information based on the real value of the claim that was
6 actually paid rather than what was report had, true?

7 A If there was a clerical error made, yes.

8 Q And that's one of the things that you would look for,
9 clerical errors?

10 A It not a big area of errors {TPHAOEUPBDZ}.

11 Q But, they do occur? They created a regulation for it,
12 didn't they?

13 A Well, I'll tell you what. I am not going to say that
14 they don't occur because, I mean, something could latch where
15 a value is miss reported for whatever reason.

16 Q Do you have the 2002 loss runs available?

17 A I don't believe so.

18 Q But, you would agree with me that if also, if the

19 information contained on the loss runs creates some

20 uncertainties as to whether errors were made, that it would

21 undermine your ability to render an opinion on premiums

22 within a reasonable degree of medical certainty that is to

23 say garbage in, garbage out?

24 A If there was any evidence that it was a garbage in

25 garbage out system, then I would be concerned about that.

30

1 But, in my review of the records, I did not find

2 that {KHEFRPB}.

3 Q But, you didn't look at the files or read carefully the

4 decision to say determine whether or not the values contained

5 in the loss runs could be justified you didn't do that yet

6 have you?

7 A I didn't feel that was necessary, no.

8 MR. GORDON: Your Honor, could I bring up the

9 easel? ({R} he said medical opinion {STPHFRPLTD} put dashes

10 after one question.

11 Q Mr. Chimenti, the reason I come up with this is that I

12 had reviewed your deposition testimony and it was among the
13 thing that you at least I thought you did, was you reviewed
14 statistical data with the Bureau to see whether those reports
15 were accurate.

16 Nad it kind of got me thinking and I would like to
17 talk to you about a couple of the claims that I just reviewed
18 last night?

19 MR. FOX: Your Honor, I think we are going far
20 afailed if we are address go claims and claims handling
21 issues at this point.

22 MR. GORDON: Your Honor, it's what we were
23 charged --

24 THE COURT: I guess it it depends on what claims we
25 are talking about. What claims are we talking about,

31

1 Mr. Gordon?

2 MR. GORDON: Augustine one.

3 MR. GORDON: What is at issue is whether or not
4 premiums -- this is an issues answer to whether or not, there
5 is testimony here that he used the 2002 loss run and assumed

6 they were accurate and they accurately reflect that which was

7 paid and what I would like to do is to go over your decision

8 in this case and figure out how he can regular conning so I

9 am the figures in the loss runs.

10 THE COURT: Okay. How many of these cases do you
11 intend to review?

12 MR. GORDON: I only had time to look at three of
13 them Your Honor one as we were working today during
14 Mr. Weber's testimony.

15 So, I am going to get three for example they are
16 the first three that we came up.

17 THE COURT: Well, go ahead, Mr. Gordon.

18 Q There has been a judicial determination that August was
19 handled prudently Mr. Chimenti. This is a case that was
20 close understand 1996 and it's a case where Mr. Augustine
21 received benefits from November 17, 1994 through September 9,
22 1996. That's a period, I think you will agree, and if I put
23 it up on the board, let me see if I can get a felt tip --
24 (and you can is August sustain {STPHFRPLT} I think the word I
25 {HREUFTSD} out was and they created a rule for that or

1 something (I don't know. If you can it. {STPHFRPLTD} and
2 that's why they created the rule or something like that. (?)

3 It's a period of less than -- can the Court see
4 this? It's a period of less than two years and actually last
5 night we contacted the Bureau ourselves that is ninety-four
6 and one-sevenths weeks. Would that be about right?

7 Would you dispute that if I told you it was
8 ninety-four and one-seventh week?

9 A I guess we will accept that for illustration purposes.

10 Q And I am going to tell that you base base based on
11 documents that were submitted in this case by Royal, that
12 there is an average week live wage here that would derive a
13 benefit rate of 4 '87 point thirty-two?

14 MR. FOX: Counsel is trying to testify now, Your
15 Honor.

16 MR. GORDON: I will show him the document. These
17 are --

18 MR. FOX: Can I have a copy, please?

19 MR. GORDON: Sure.

20 MR. GORDON: And actually, Your Honor, your
21 decision indicated that the claimant was disabled on that day

22 and released to his regular employment and executed a
23 suspension in September of '96. And I think, just so that I
24 can show the witness, can you determine the weekly comp rate
25 there, is that correct, at 487.32.

33

1 A 487.32.

2 Q Okay. And I tell you that I did the math and and if we
3 multiply that by 487.32, I think I did the math, but I don't
4 see it in front of me right now. Oh, 45,000?

5 THE COURT: So, you didn't do the math. He did the
6 math.

7 MR. GORDON: Actually, I did it, but then he took
8 my script and I did a typed copy for me.

9 THE COURT: All right.

10 Q You see that?

11 A Yes, sir.

12 Q And I realize that you don't have a calculator, I can
13 give it to you if you want to check on that, but I think
14 that --

15 THE COURT: That's okay.

16 MR. GORDON: Okay.

17 Q The 2000 -- I am going to show you a copy of the 2002
18 loss run.

19 Based on your assumptions you would expect that the
20 indemnity would be 45,934.18, would you not?

21 A I would have to have the claim file to be able to give
22 aanswer to that.

23 Q Really? The Judge's decision in this case, this Judge's
24 decision all indicated that this was what ultimately was paid
25 out in the case. If, in fact, if, in fact, the retro, the

34

1 excuse me, the 2002 loss run is accurate reflect thanks which
2 should have been paid to the claimant this was not a
3 contested claim it was paid, you would expect to see a figure
4 of 45,934 in the loss run received, wouldn't you?

5 MR. FOX: Your Honor, these questions are more
6 appropriate for Mr. Weber, not this witness. He testified he
7 hasn't reviewed the claims files.

8 MR. GORDON: Your Honor, he is calculating premium
9 he is using it on a document. Okay?

10 THE COURT: Go ahead.

11 Q I'm going to show you Bates stamp are '00 '00 on seven

12 proceeded by Royal which is the 2002 loss run. And I am

13 going to show you Augustine, and would you tell the Court

14 what the indemnity paid on that closed file was?

15 MR. FOX: Company leave a copy, please?

16 Q Do you see it?

17 A Yes.

18 Q It's a hundred and \$67,934, is that right?

19 A That's correct.

20 Q Can you reconcile that with the Court's decision?

21 A Not sitting here, no. I mean, that would take some

22 analysis.

23 Q Well, you would have to look at the claim file, wouldn't

24 you?

25 A Well, let put it his way:

35

1 I'm also looking at there were expenses paid of {S}

2 8 thousand ones hundred {TPEUFRPTD} \$4.00. I don't know what

3 that was for. There was a recovery of \$3,659. I don't know

4 what that was for.

5 Q Right. But, the indemnity certainly isn't had a

6 thousand 900 thirty-four dollars sit?

7 A I am only going by what you are giving me.

8 Q I am giving you what the Court basically what Webber

9 testified to that the Court indicated that the claim was paid

10 out until Mr. Augustine was able to return back to work. It

11 was a closed file and paid ninety-four and seventh weeks of

12 benefits and 45 thousand '89 thirty-four eighteen. I just

13 looked at it last night.

14 A I guess for what you are putting there, and what is

15 here, there is a different for instance although I am not in

16 a position to explain why there number would be different

17 from whatever number you have.

18 Q I understand that. Okay. There is some question I mean

19 you need to regular conning soil this don't you?

20 A If you are going to ask me to regular conning soil it

21 thing I would have to reconcile it.

22 Q I'm sorry.

23 A If you are asking me to reconcile --

24 Q You can't reconcile. You haven't seen the claim file,

25 have you?

1 A No. What, I am saying is, I can't reconcile without
2 having information.

3 Q Another case that we talked about was the Younker case.

4 And it was interesting in preparing for today, we had
5 commented and the Court the commented on the fact that there,
6 Younker was an issue with regard to how expenses were
7 allocated and my recollection is Mr. Chimenti, is that you
8 testified that, that to do your retro calculations, you
9 incorporated litigation expenses, is that true, as part of
10 your retro calculation?

11 A No.

12 Q The allocated loss expenses is not a part of your retro?

13 A No. Just the incurred loss.

14 Q The medical and indemnity and not the expenses?

15 A Not the expenses no.

16 Q You didn't include any of the expenses?

17 A No.

18 Q One of the things that was confusing for us, I wonder if
19 you saw this because it was on the 2002 loss run.

20 MR. GORDON: Can you see the claim for Younker? I
21 think that is the second claim.

22 And can we give Mr. Fox a copy?

23 Q In 2002, there was a reserve on the Charles Younker

24 case. This was a silicate case, is that right, occupational

25 disease case?

37

1 A Yes. From the description, that's what it would sound

2 like to me.

3 Q Remarkably, although we didn't ask for it, Mr. Fox,

4 among the Younker documents provided us are 01055, an exhibit

5 which I have marked for identification purposes as AU, a

6 decision on the Younker case that was issued October 15,

7 1997. Could you review that, please?

8 Mr. Chimenti, I trust you're done?

9 A I am completed.

10 Q Now, would you agree that the loss run reflect as 1995

11 loss that shows that there are payments foreign denial in it

12 and I think some payments for medical I don't have the loss

13 run in front of me I think you have it, and outstanding

14 reserves?

15 A There were no payments for indemnity. \$446.00 paid in

16 medical and a reserve of 48,905.

17 Q And that's a 2002 loss run?

18 A That's correct.

19 Q And would you tell the Court what hand in 1997 to that
20 claim?

21 A The --

22 MR. FOX: I am going to object, just for the
23 record. It's beyond the witness -- way beyond the scope of
24 his testimony in this case.

25 THE COURT: All right. Overruled, Mr. Fox.

38

1 THE WITNESS: The claim was dismissed by the
2 worker's compensation judge.

3 Q And if you were consulting the insured at that time,
4 would you have gone to the carrier to make sure that the
5 reserves goes were adjusted appropriately and that
6 statistical files, statistical card were filed with the
7 Bureau {TROE} reflect that the company had prevailed?

8 A If it was warranted. I mean, I am not sure if there was
9 any other claim associated with this or if this was his only
10 claim that he was presenting.

11 Q That was in 1995. Silicosis claim or silicate exposure
12 claim that resulted in sinus surgery, is that right?

13 A That's what the --

14 MR. FOX: Your Honor, I would just like to make a
15 further objection. This isn't one of the files that was at
16 issue in the case, so we are not even dealing with the file
17 that was within the scope that we agreed to discuss.

18 THE COURT: It could be a damage question. That is
19 the issue here.

20 BY MR. GORDON:

21 Q So, in any event, you can't reconcile this decision with
22 the loss run, can you?

23 A Well, I don't have benefit of the file to be able to til
24 why they may have kept the reserve on this claim file.

25 A I guess the answer to that is, I don't know why they

39

1 would have done that.

2 Q Well, and just for your identification it does say that
3 the claimant conceded, the claimant's attorney that, they
4 couldn't make a causal connection and they withdraw the claim

5 didn't three they didn't withdraw it they took the Judge's

6 decision on it?

7 THE COURT: Does a reserve, in any way, impact the

8 retrospective premium that's owed?

9 MR. GORDON: Oh, yes. And actually the point I am

10 trying to make here, Your Honor, is that if you are using

11 loss runs here,.

12 THE COURT: I understand your point.

13 MR. GORDON: If you are using loss runs, they

14 better be accurate.

15 THE COURT: I understand.

16 Q And what you really didn't need is you did need to

17 review that claim file is that right?

18 A To answer your question or to do the retro calculation.

19 Q Well, to do the retro, to reconcile this claim, you have

20 to review the claim file, the claim file {TKPWOEUGS} to have

21 more accurate information than is that loss run, is it not?

22 A Well, let's put it this way:

23 If I was Latrobe Construction or their risk

24 manager --

25 Q Well --

1 MR. GORDON: Well, Your Honor, could I ask that
2 witness be allowed to finish his answer?

3 THE COURT: Yes, you can finish.

4 THE WITNESS: Excuse me. Can I answer the
5 question? If I had a question regarding a reserves on a
6 claim that there was no further suppose sure on? Right. And
7 I am the risk manage for Latrobe Construction, what I would
8 then do is call the carrier and discuss that with him and
9 find out why that reserve is still there. If they have a sat
10 fact tore answer then the reserve would stand.

11 If they say it's an oversight on our part, we are
12 going to close it, then they would do that and then Latrobe
13 consistent would not get charged for that portion of the
14 incurred loss. I will change it and maybe it will help the
15 Judge.

16 Q That incurred loss is five years after the case was
17 dismissed because claimant's attorney conceded that he could
18 not, or she could not make out a prima facie case of
19 entitlement?

20 A And that's why I would call the carrier and say can you

21 please explain to me why there is still a 4 \$8,000.00 reserve

22 on this file.

23 Q Okay. In any event, your calculations took into

24 consideration the reserve on this case?

25 A In 2002 it would have. I would have to go look at the

41

1 current loss runs to see in that has since been removed

2 because fit has been removed, then they would have received

3 credit for that.

4 Q But that is not part of your \$851,000 assessment today?

5 A If it was on the 2002 loss run, chances are it was.

6 Q Included in your 850 --

7 A Unless he was in a job classification that was not

8 subject to the (retrospective rating.) Then none of that

9 would have been included in the retro calculation even when I

10 did them in 2003?

11 Q In fact, some of the employees are not subject to the

12 retrospective calculation, is that right?

13 A That's correct.

14 Q And did you go through each one of the employees of the

15 800 claims to determine which ones were included that should

16 not have been included?

17 A Yes.

18 Q You did?

19 A Yes.

20 Q All eight hundred claims?

21 A What I did is I went through every page of every loss

22 run from 1980 through 1995 and I identified those claims.

23 Some of them were already identified. The ones that were not

24 if it appeared to be a claim that was in a classification

25 that should not be included, then I followed up on that.

42

1 MR. GORDON: Let me have -- let me have the Freed

2 claim?

3 Q The Freed claim is --

4 MR. GORDON: Oh, and I would like to offer into

5 into the record. (

6

7 (He) said let me answer because I think it will

8 help the judge if I do (I left that part out where the last

9 objection was or something about can I leave an answer.

10

11 MR. GORDON: Your Honor, at this time, I would
12 offer into the record a the a you and a very.

13 MR. FOX: No objection, Your Honor.

14 THE COURT: The off first are admitted.

15 MR. GORDON: And I think we did -- did we
16 previously move this.

17 Your Honor, I don't know if the Court has accepted
18 AS, which is the Royal and Sunalliance letter.

19 THE COURT: Yes. I think that Mr. Fox withdrew his
20 objection.

21 MR. GORDON: Oh, okay.

22 {STPHFRPLTD} watch that one question way back there
23 {STPHFRPLTD} something about an statistical scared.

24 BY MR. GORDON:

25 Q This morning we had some discussions on the Freed claim.

43

1 And I am going to show you what has been identified as {R}
2 '00 '03 five {STPHFRPBLGTS} {R} '00 '03 five, it looks like,
3 and this is the loss run, and let me identify this as an
4 Exhibit A.

5 THE COURT: Dave, let me see that loss run, please?

6 (Off the record discussion.)

7 BY MR. GORDON:

8 Q And Freed is the second from the bottom. And I would

9 ask you if, in looking at that, you can determine for us what

10 the amount of the indemnity was paid on Freed?

11 A The indemnity paid was \$49,244.

12 Q What was it? 49,000?

13 A Two forty-four.

14 Q Now, you've indicated that expense is not included in

15 the retro calculation, is that right?

16 A That's correct.

17 Q In the loss run, do they show the return from the

18 supersedeas fund going into the expense column?

19 A There is a recovery indicated of \$28,873, if my eyes

20 are accurate. These numbers are kind of small.

21 Q Recovery in the expense?

22 A Well, it is not an expense. It's a recovery --

23 Q Yeah. But, it put under the expense column?

24 A It's put under the recovery column.

25 Q Doesn't say expense there?

1 A No. It says recovery on my page. The expenses paid
2 would be the top number. The recovered would be the second
3 number.

4 Q Okay. All right.

5 A So, that's under the recovered, not the expense.

6 Q Okay. Now, we've already had testimony, so we have just
7 if we make another page here arrange this is an exhibit ear
8 size I tried this morning so let's see if I can get there
9 correct right now, 49 two forty-four was actually paid.

10 There was a recovery of \$28,870, does it say three or five?

11 Q Three. And when we subtract the two, we have \$20,371.

12 That is a net pay, is that right?

13 A That would be correct.

14 Q Now, we've already had a concession by by Mr. Weber that
15 that 3,855.24 should have been deducted from this amount
16 because of the delay in the supersedeas fund's application
17 and and the in some form of penalty. And that figure he gave
18 us was 3,855.24.

19 And if I subtract that then what is alleged that
20 should have been peeled and which would have then fairly been

21 reflected on the loss run is \$16,515.76.

22 Now, if you review the Freed decision the total of
23 67 and one-sevenths weeks was paid, and I can do the math for
24 you, but actually that comes to \$15,946.43.

25 If this is, in fact, the net that's written on the

45

1 statistical information upon which you rely on the loss run
2 of 2002, and this is the deductions by virtue of the error,
3 then theoretically this figure here has to be 67 and
4 one-seventh's weeks of workers' compensation benefits, but it
5 is not. And they paid out 67 and one-seventh's weeks of
6 benefits.

7 Without looking at the claim file, can you
8 reconcile that?

9 A I can't reconcile that. But, what I can tell you is
10 that the Freed claim along with the Younker's claim that we
11 just discussed (a minute ago) were all in the '89 2 to '94
12 retro period that was maxed out.

13 Q But that is not the point.

14 A My point being --

15 THE COURT: Whoa. Whoa. Whoa. Whoa. Just a

16 second go ahead. Continue.

17 THE WITNESS: My point being is, you would have to

18 reduce the incurred losses by over \$450,000 before the

19 retrospective premium.

20 Q I agree.

21 A Goes below the maximum.

22 Q I agree. But, the point here is that we have looked at

23 just three claims and the data upon which you are relying on

24 over eight hundred claims we just looked at the first three,

25 and you can't reconcile what was payable in those claims

46

1 versus what your loss run slows?

2 MR. FOX: I am going to object. Counsel is elected

3 three claims and the witness hasn't had the benefit to review

4 the files.

5 THE COURT: It's a weight issue.

6 Q So, you don't know whether the data in your loss run is

7 accurate do you?

8 A I guess I don't know if the figures that you are using

9 are inclusive of everything that should be included or not.

10 In other words, there might have been interest due on an
11 awards or something of that nature.

12 Q You can't --

13 A There might have been some other allowable expenses that
14 would make us that difference.

15 What I am saying is from what you are providing to
16 me I can't tell you what the answer is or whether their
17 number is correct okay your number is correct. I can only go
18 by their {-P} number ever numbers when I calculate the
19 retrospective premium and I don't have any reason to believe
20 that their numbers are not accurate.

21 Q Other than the fact that you slow a hundred and 677
22 thousand dollars were paid on a claim of disability for list
23 than two years?

24 A Again, I don't have the benefit of going --

25 Q I can only tell you, Mr. Chimenti, what was provided to

1 me. I can't tell you, I mean, I can only rely on documents
2 that Royal provided me and which the experts addressed. I
3 don't know that there are other documents out there. They

4 have not been provided so I can't help you there either.

5 A Right. And this goes back to my point that I just made

6 a few minutes ago that if Latrobe had any questions

7 whatsoever about the values that were record order their loss

8 runs, there were plenty of people at Royal that were in

9 contact with the principals at Latrobe Construction where

10 they could have gone over these numbers am this was an annual

11 exercise that they did. And if there were questions about

12 values on loss runs, they could have addressed those and got

13 even their answers which they may have done. I don't know

14 that that wasn't done.

15 MR. GORDON: Your Honor, I would offer a with which

16 is just the loss run data for the Freed claim.

17 MR. FOX: No objection, Your Honor.

18 THE COURT: All right. The offer is admitted.

19

20 {STPHFRPLTD} way back in that question that I left

21 off the end or supervise an interruption they were talking

22 about a statistical card, try to fix it up.

23 Q Do you know whether medical expenses in any of the

24 (actual) claims correlate with the medical expenses that are

25 shown on the 2002 summary or loss run that you ever?

Chimenti - Redirect

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1 A Could you repeat that question?

2 Q Do you know whether or not are whether medical expenses
3 actually incurred on the twenty-one claims received correlate
4 to the medical expenses that were that revealing the 2002
5 loss run?

6 A I did not go through the medical expense goes that were
7 paid but again going back to my privilege answer regarding
8 insurance company operations, I would have to say that they
9 would correlate.

10 MR. GORDON: I don't have any other questions, Your
11 Honor.

12 THE COURT: All right. We'll take about a
13 ten-minute recess.

14 (Court recessed at 2:25 p.m.):

15 (Court reconvened at 3:15 p.m.)

16 THE COURT: Okay, Mr. Fox.

17 REDIRECT EXAMINATION

18 BY MR. FOX:

19 Q Mr. Chimenti, you testified that you reviewed boxes and

20 boxes of documents in doing your analysis on the amount of

21 premium due.

22 Could you describe, just so the record is clear,

23 what documents you reviewed?

24 A There were underwriting files, retrospective rating

25 adjustments, claim files. The underwriting files contained

Chimenti - Redirect

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1 some of the policy information, contained a correspondence

2 between the underwriter and the broker. There was a wealth

3 this of information. It was the --

4 MR. GORDON: Your Honor, if I might, we have

5 requested the underwriting files in this case in discovery

6 and we were told that they did not exist.

7 THE COURT: Okay.

8 MR. FOX: Your Honor,.

9 THE COURT: Is this an objection?

10 MR. GORDON: It is an objection.

11 THE COURT: Asking what?

12 MR. GORDON: Well, any testimony that he is going

13 to offer right now based on an underwriting file that we

14 asked --

15 THE COURT: We haven't gotten there yet. He just
16 said he saw a couple. So, if you want to raise an objection
17 with respect to a separate question in which he refers to a
18 claim file, I think that would be the appropriate to
19 interject the objection.

20 Continue, Mr. Fox.

21 Q Yes. Mr. Chimenti, you testified that you reviewed
22 retro adjustment documents?

23 A Yes.

24 Q Can you describe those and what they consistent consist
25 of?

Chimenti - Redirect

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1 A The retro documents that I reviewed were from 1980
2 through 1995 and they were the historical records from the
3 very inception of the retro. In other words, take the 1980
4 retro, for instance, there was information there where I was
5 able to calculate the standard premium, then a record of the
6 first retro adjustment, a record of the second retro
7 adjustment, the third, fourth, fifth, all the way through the
8 twentieth adjustment, so to speak, to bring it up to current.

9 Q Now, how were those documents general rate Ted those

10 retro just. Documents?

11 A Those were generated by Royal insurance, they are

12 records that would have been sent to the insured every year

13 when their retro adjustment was calculated. They would

14 include the retro adjustment, worksheets that show exactly

15 how the premium was calculated, and also the supporting loss

16 runs that would be attached to the retrospective rating work

17 sheets.

18 Q Were they business records of the company?

19 MR. GORDON: Objection, Your Honor. He is not

20 qualified to talk about what the business records of the

21 company are.

22 THE COURT: Overruled.

23 THE WITNESS: Yes.

24 Q And what purpose did you review the retro just. Sheets?

25 A What I December I went back and calculated each of the

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1 retrospective rating periods star are starting from initial

2 adjustment to the current year for each of the retrospective

3 policy periods.

4 A Just to make sure that the amounts that Royal had on
5 their documents were correct.

6 Q What was the volume of the documents that you reviewed?

7 MR. GORDON: Judge, I would object on relevancy and
8 also he says he reviewed many boxes. So, what's the
9 relevance?

10 THE COURT: All right. Overruled.

11 THE WITNESS: It was probably four boxes of
12 documents. That would be just forth retrospective rating
13 information.

14 Q Were there any documents that you wanted to review or
15 had asked to review that were not supplied to you?

16 A No.

17 Q Were the types of documents that you reviewed that you
18 describe documents that the types of documents that you would
19 routinely review as an expert in determining premium amounts
20 due?

21 A Yes.

22 Q You testified that you reviewed correspondence files.

23 A Yes.

24 Q Did that include correspondence from Mr. Gordon and his

25 law firm, that is correct, is that correct?

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1 A There were some letters that were.

2 MR. GORDON: Your Honor, this goes outside the
3 scope of both direct and cross.

4 THE COURT: What about the letters, Mr. Fox? What
5 are we getting into here?

6 MR. FOX: Just the issue has been raised for the
7 first time today that there may have been some amount of
8 premium that had been of paid despite the fact that's never
9 be alleged before there is no documentation in the record.

10 THE COURT: Well, we can go on and on about rooms
11 full of documents that he has reviewed.

12 I think perhaps you can restricted your questions
13 to things that he may have reviewed that relate to some of
14 the issues that were raised by Mr. Gordon during the course
15 of his cross-examination of Mr. Chimenti.

16 The letters might be one example of something that
17 have very little bearing whatsoever on his cross-examination.

18 MR. GORDON: Your Honor if I might also, the
19 counterclaim there has been an alleged misrepresentation of

20 the premium.

21 THE COURT: Certainly we covered that to some
22 extent in the liability phase of the case.

23 MR. GORDON: But it has been raised.

24 THE COURT: It's be raised there is no question
25 about it it's be raised, but I think that issue was covered

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1 what during the testimony of your expert, I forget her name
2 at this point.

3 MR. FOX: LuAnn Haley.

4 THE COURT: LuAnn Haley.

5 MR. GORDON: In terms of how much premium was paid,
6 Your Honor?

7 THE COURT: Well, there was some issue with respect
8 I think to, as I recall reading the transcript, and there was
9 some issue that was raised during the course of her testimony
10 and I don't recall with particularity about { *F } what that
11 was at this particular point.

12 But, I realize it was raised in the counterclaim
13 and it wasn't pursued too vigorously certainly during the

14 liability as specs of the case.

15 MR. GORDON: Your Honor, how much money is due or
16 return --

17 THE COURT: It is a liability issue I understand.
18 I understand why you are doing it at this point. You are
19 raising these issues at this point because it relates to a
20 damage question.

21 MR. GORDON: Right.

22 THE COURT: I understand that. What I am trying to
23 do is cut through this because we are going able are going to
24 be able, you can conduct your redirect examination of
25 Mr. Chimenti with respect to the documents so that he may

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1 have reviewed that reasonably raised by Mr. Gordon during
2 list cross-examination of Mr. Chimenti.

3 So, with that guideline in mind, please continue.

4 Kin (that were {ROEUPBLD} Ohio raise {STKPWHRADZ}).

5 MR. GORDON: Sure.

6 BY MR. FOX:

7 Q You are considering all the documents you reviewed

8 Mr. Chimenti including the reports of Mr. Gordon some expert,

9 Mr. Raabe, did any of those documents support in any claim
10 that Latrobe had overpaid on its premium?

11 A I found no evidence whatsoever in any of the documents
12 that I reviewed that there was an overpayment of premium.

13 Q Now, Mr. Raabe, in his report dated July 31st, 2003,
14 stated documents that were made available provided
15 (sufficient) information to calculate premiums I believe to
16 be reasonable and true.

17 Did you review that language from the report?

18 MR. GORDON: Your Honor, that has been previously
19 asked and answered and it doesn't relate to any of the
20 cross-examination.

21 THE COURT: All right. Overruled.

22 THE WITNESS: Yes, I reviewed that in his report.

23 Q And did Mr. Raabe make any reference anywhere in his
24 report that suggest -- suggesting that premiums had been
25 overpaid by Latrobe?

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1 A No, not at all.

2 {STPHRFPLTD} watch the the last ruling, (watch what

3 {TKPWORLDZ} open said, also, something about something being

4 {TOUFPLD} upon by.

5 Q Now, you testified regarding your interest calculation

6 earlier and I believe that Mr. Gordon inferred that you

7 calculate interest in a way that I don't think is correct but

8 not to quibble with Mr. Gordon, can you just describe for me

9 specifically how you did the interest calculation?

10 A What I did, Mr. Gordon had assumed what I did was to

11 take the \$851,000 figure from my 2003 report and simply

12 calculate interest on that amount from 1996 coming forward.

13 What I actually did was, I summed up the criticisms

14 and premium charges for the retrospective adjustment in 1996,

15 and I came up with a retro premium due of \$926,998. And then

16 I calculated the six percent interest for one year on that

17 amount, which came out to \$55,619.88.

18 Then I took the cumulative total of the retro

19 premiums for the '97 adjustment which was \$785,415, again,

20 calculating the six percent on that amount.

21 I did that for the '98, '99, '00, '01, '02, '03,

22 '04 and '05 policy periods for six percent for one year.

23 And then I took the February, '06, retro adjustment

24 and calculated the interest at six percent for three months.

25 And the total of the interest at six percent simple interest

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1 from February 1st 1996 to May 1st, 2006, is \$539,003.43.

2 Q And what does that make the total claim?

3 A The -- excuse me. The retrospective premiums due would

4 be \$943,670 to date.

5 The interest would be \$530,003. And the total

6 would be \$1,473,673.

7 Q Now, how -- when you calculated the interest, how did

8 you determine when the interest started to run again?

9 A There was a deposit planned letter that was sent on

10 January 29th, 1996, and I used that date as the start date.

11 Actually I used February 1st just for simplicity sake rather

12 than January 29th.

13 Q I would like to show you what's been marked as Exhibit

14 200-A. It is actually a global exhibit?

15 MR. GORDON: Do you have an extra one?

16 Q I would ask you if you could identify the demand letter

17 that you referred to?

18 A It would be about the sixth page through the sit of

19 documents. It's a letter dated January 29th, 1996, from

20 Royal, Richard Fuller, the underwriting manager, in which he

21 asked for \$546,709, which was owed on the adjustment, and the

22 \$281,000 that was owed from the previous year.

23 Q And you started the interest rate calculation from date

24 forward?

25 A Within two days. I used February 1st, 1996.

Chimenti - Recross

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1 MR. FOX: I would move to introduce Exhibit 200-A

2 into evidence.

3 MR. GORDON: Your Honor, I would object on hearsay

4 grounds.

5 THE COURT: All right. The offer is admitted.

6 MR. FOX: I have no further questions of

7 Mr. Chimenti.

8 MR. GORDON: Just two.

9 REDIRECT EXAMINATION

10 BY MR. GORDON:

11 Q The amount in interest is predicated on 2006, is that

12 right?

13 In other words, you didn't, the interest

14 calculation that you provided to the Court along with the
15 amount of principal is predicated on 2006 loss runs and not
16 on 2002?

17 A They were -- the interest from the 2006 loss runs would
18 only be interest for six months, from February 1st until to
19 date.

20 Q But the principal you used in the calculation was what
21 you claimed to be due as of 2006 based on the 2006 loss runs?

22 Q You used the \$900,000, didn't you?

23 A No. What I used was --

24 Q You didn't use the 851.

25 A No, I did not use the 851.

Chimenti - Recross

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1 What I did use was the retrospective premium that
2 was due on February 1st, 1996, based on the February 1st,
3 1996 loss runs.

4 Q Right. But, you valued the claims as of 2006?

5 A No. They were valued as of 1996.

6 Q That is it?

7 A That's it.

8 Q So, your testimony is, it was \$900,000 due based on what

9 the outstanding values were in 1996?

10 A No. The interest.

11 Q I am not talking about the interest --

12 A Well, we were just talking about the interest.

13 Q But, the principal you used was more than 851,000, so

14 you were using the 2006 loss runs, weren't you?

15 A No.

16 Q No?

17 A The principal amounts in the interest calculations is

18 based on the cumulative retrospective premiums for the years

19 1980 through 1995 valued as of February 1st, 1996 for one

20 year. Then I used the loss runs valued as of February 1st,

21 1997.

22 Q Let's cut to the chase?

23 A I am getting to the chase.

24 MR. FOX: I object, Judge.

25 MR. GORDON: I know each year.

Chimenti - Recross

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1 Q The chase is did you use any loss runs beyond 2002.

2 THE COURT: Just answer that question, please. Can

3 you answer that question with a yes or no?

4 THE WITNESS: You had to in order to calculate the
5 retrospective premiums that were due in 2003, four, five and
6 six.

7 MR. GORDON: Your Honor, we have never gotten that
8 documentation, nor have we gotten claims information on that
9 despite the fact that it's also been an issue. So, it's
10 objected to.

11 THE COURT: Pardon me?

12 MR. GORDON: It's objected to.

13 THE COURT: Well, the objection is overruled.

14 Q You assumed that Mr. Raabe when he was doing the
15 calculations assumed that which was, -- was taking
16 information that you yours had these are the adjustments with
17 the loss runs attached, is that right?

18 A I didn't assume anything. What Mr. Raabe did in his
19 report. Mr. Raabe relied upon the records, what he states in
20 his report here, that the documents that remain available
21 provided sufficient information to calculate premiums I
22 believe to be reasonable and true. That is what he relied
23 upon. That's what he states in his report.

24 Q Right.

25 A I am not going to assume anything that he put in his

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1 report I can only tell you what his report says.

2 Q You don't know what he was relying?

3 A He was relying on the information provided to him to

4 calculate the premiums which he believed to be reasonable and

5 true.

6 Q And those are the loss runs? Do you know? Do you know

7 what he was relying on?

8 A He relied upon whatever information he felt was

9 sufficient for him to calculate the retrospective premiums?

10 Q And as did you and that was the loss runs?

11 A I relied on the loss runs and write had questions about

12 the loss runs I asked questions.

13 Q You didn't rely at all on Raabe's report, did you?

14 A No.

15 Q He didn't provide you with anything that you didn't

16 have?

17 A I don't think -- know didn't provide me with anything.

18 Q Do you know if he had any documentation that you yours

19 didn't have?

20 A He may have had documentation from Latrobe Construction

21 that I didn't have.

22 Q But, you don't know?

23 A I would only assume that I probably did because his

24 report has premium amounts that Latrobe paid, so I would have

25 to say he probably had that available to him, which I did not

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1 have available -- I didn't have Latrobe Construction's

2 records available to me. I'm sure he, as their expert, had

3 their records available to him.

4 Q Do you know that? Do you know that, Mr. Chimenti? Do

5 you know? Did you talk to him?

6 A I didn't talk to him. What I am saying is, he has

7 information in his report that I don't have in my report

8 because it wasn't available to me, which would only leave it

9 that the only place where (I) would think to logically

10 conclude he had gotten it from.

11 Q Doesn't he indicate in his report where he got his

12 information from? Doesn't it indicate that this is all based

13 on information provided by Royal?

14 A I am not sure that that's what that says.

15 MR. GORDON: No further questions, Your Honor.

16 THE COURT: All right. Thank you. Mr. Chimenti

17 you may step down.

18 THE WITNESS: Thank you, Your Honor.

19 MR. FOX: Your Honor, I believe we just have one

20 further witness Diane Leger. And what I would like to do is

21 put her on first thing tomorrow morning and I intend to

22 complete her very quickly.

23 I think that if we do that we can address some of

24 the issues that were raised for the first time on cross today

25 with regard to some of these calculations that were done. I

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1 am hopeful at at at lesion that we can address that.

2 THE COURT: Any problem with that, Mr. Gordon?

3 From that? It's a quarter to four. Would you like to end

4 today or continue?

5 MR. GORDON: I would like to continue.

6 THE COURT: How many witnesses do you have?

7 MR. GORDON: I may have one. I may have none.

8 THE COURT: Okay. How long will it take for the
9 next witness?

10 MR. FOX: Dianne Leger is my only remaining
11 witness.

12 THE COURT: How long will it take?

13 MR. FOX: Probably fifteen minutes tomorrow
14 morning.

15 THE COURT: Cross-examination, Mr. Gordon?

16 MR. GORDON: Maybe -- I don't know what. Maybe ten
17 minutes.

18 THE COURT: It quarter after four. Let's do it
19 now.

20 MR. FOX: Your Honor, my point is, we need to do
21 some research on the issues that were raised for the first
22 time with regard to these loss runs and I --

23 THE COURT: What type of research?

24 MR. FOX: There may be explanations that there was
25 miscoding which we can easily determine. We may be able to

1 easily determine by checking data at Royal as to whether

2 certain of the entries on the loss runs were miscoded and

3 that would show that there was no prejudice to Latrobe.

4 Those are really the only issues that.

5 THE COURT: Question what, how many loss runs do we
6 have to get into here?

7 MR. FOX: We would have to get into Augustine
8 that's the only issue we need to explore because that is the
9 leniency are only one of interest. We may have a very well
10 do it in fifteen minutes. We have been really blind-sided by
11 this. It hasn't been raised in any of their interrogatories
12 or briefs or even by their experts until today and Mr. Gordon
13 was trying to testify as an expert witness on those issues.

14 MR. GORDON: Your Honor, there was a -- the burden
15 here is to demonstrate what premiums are due. We have had
16 testimony that there was reliance on the 2002 loss runs. All
17 I did was demonstrate for him based on the Court's decision
18 what was paid out, what should have been paid out on
19 Augustine and how that can be reconciled. That is not --
20 that doesn't raise rebuttal. There was no, I just asked him
21 whether or not company reconcile that. It not rebuttal.

22 THE COURT: Well, he can't reconcile it. There is
23 some question with respect to the loss runs and the accuracy

24 of those loss runs. I think that is the issue here.

25 MR. GORDON: But, wasn't that the --

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1 THE COURT: But, what you pointed out during the
2 course of your cross-examination was the loss runs basically
3 conflicted with the amount of money that was paid out on the
4 claim. Those loss runs of course relate directly to the
5 amount of retrospective premiums that are due.

6 MR. GORDON: I agree.

7 THE COURT: So, you know, I guess I was taught a
8 long time ago and I am going to follow that lesson in this
9 case. In any lawsuit there is always a search for the truth
10 and there can be some (reconciliation) in what appears in the
11 loss run and the amount of money paid out to Mr. Augustine.

12 The Court would be in error if it didn't hear that
13 testimony. ({RERBG} is reconcile.

14 MR. GORDON: I agree, Your Honor. The issue is --

15 THE COURT: The issue is whether or not we are
16 going hear her testimony today or tomorrow.

17 We will hear it tomorrow, nine-thirty tomorrow

18 morning. Declare a recess, please.

19 (Court recessed on Tuesday, May 2, 2006, at 3:45 p.m.)

20 * * * * *

21 I certify that the forgoing is a correct transcript
22 from the record of proceedings in the above-entitled matter.

23

24 S/Michael D. Powers
Michael D. Powers
25 Official Reporter

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1 *****NOT CERTIFIED WITHOUT ORIGINAL SIGNATURE*****

2

3 {STPHFRPLTD} {STPHFRPLT} Court recessed (I (watch
4 the end end of one answer or one question there. (Also, I
5 left out a question from Gordon, and I think the question
6 was: You used the loss runs, didn't you? {STPHFRPLTS} they
7 were all interrupting.

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